CARRIERS—CARRIAGE OF PASSENGERS—EJECTION OF PERSON AT PLACE OTHER THAN STATION.—CAHER v. GRAND TRUNK RY. CO., 71 ATL. 225 (N. H.).—*Held,* that a carrier which ejected a person from a train for nonpayment of fare at a place other than a passenger station, in violation of a public statute, is not necessarily liable for resulting damages, but it must appear that it occurred through its failure to perform the duty imposed by statute; and, to recover, the ejected person must prove the insufficiency of the station at the place of expulsion, his own care, and that the injury resulted from defendant's fault. Bingham, J., *dissenting.*

The common law rule is that a railroad may eject at any place a passenger who refuses to pay his fare. *Scott v. Clev., Cin., Chi. & St. Louis Ry. Co.,* 144 Ind. 125; *Rudy v. Rio Grande Western Ry Co.,* 8 Utah 165. But this rule is qualified in that the ejectment must be at a place that is reasonably safe from danger. *Wyman v. Northern Pacific Ry. Co.,* 34 Minn. 210; *Atchison, T. & S. F. R. Co. v. Grant,* 38 Kan. 608. Another qualification is that where a statute provision forbids the ejectment of a passenger at a place other than a station, an action for damages will usually lie. *Texas & Pacific R. Co. v. Casey,* 52 Tex. 112; *St. Louis Southwestern Ry. Co. v. Harper,* 69 Ark. 186; *Loomis v. Jewett, Receiver, Erie R. Co.,* 35 Hun. (N. Y.) 313. But the passenger would be entitled only to nominal damages, unless circumstances warranted greater recovery. *Chicago & Alton R. Co. v. Roberts,* 40 Ill. 503. On the other hand it has been held that where a person went on the train intending not to pay fare, and refused to do so, became a trespasser and could be ejected at any place, the statute provision not applying to trespassers. *Lillis v. St. Louis, Kansas City & Northern Ry. Co.,* 64 Mo. 464.

CARRIERS—CARRIAGE OF PASSENGERS—ESTABLISHMENT OF RELATION.—LOCKWOOD v. BOSTON ELEVATED RY. CO., 86 N. E. 934 (MASS.).—*Held,* that where the plaintiff and his companion desiring to become passengers signaled an open car, and the motorman having inclined his head, they started from the sidewalk and on it being stopped, boarded the car with the conductor's knowledge, and the plaintiff had reached and stood upon the running board on his way to a seat at the time of his injury, the relation of passenger and carrier had been established.

It is a well established point of law that a person is a passenger if a street car has been stopped for him and he is in the act of getting aboard when the car starts. *Gordon v. West End St. Ry. Co.,* 175 Mass. 181. And the carrier is bound to give him reasonable time to enter and leave its cars and while it may start before the passenger is seated, it must exercise the greatest degree of care that a cautious and prudent man would use under the same circumstances in starting a car so as not to jerk or jar and thereby injure him. *Barth v. Kan. City Elevated Ry. Co.,* 142 Mo. 535. Some courts regard the carrier as the offeror, and hold the acceptance as not made until the offeree has actually boarded the car. *Chicago Union Traction Co. v. O'Brien,* 219 Ill. 803; *Donovan v. Hartford St. Ry. Co.,* 65 Conn. 201. The weight of authority, however, considers the sign to the motorman as the offer and the checking the speed of the car as the acceptance. *Brien v. Bennett,* 8 C. P. 724; *McDonough v. Met.*

R. R. Co., 135 N. E. 682. The payment of fare is not necessary to create the relation of common carrier and passenger. *Rose v. Railroad*, 39 Ia. 246.

CARRIERS—INJURY TO FREIGHT—EVIDENCE.—DUNCAN V. GREAT NORTHERN RY. CO., 118 N. W. 826 (N. D.).—*Held*, on proof of delivery of the property to the carrier in sound condition, and of its redelivery by the same carrier at end of the route in damaged condition, or a failure to redeliver it, a sufficient case is made to sustain a recovery for the damages or loss by the shipper.

It is well settled that at common law a common carrier is an insurer of the goods intrusted to him and is responsible for all losses to the same, save such as are occasioned by act of God or the public enemy. *Angell on Carriers*, § 67, 148, 153; *N. J. Steam Nav. Co. v. Merchants' Bank*, 6 Howard 381. The right of a common carrier to limit his responsibility by a special contract has long been settled law in England. *Carriers' Act*, 1830. And in this country it is settled by the great preponderance of authority that such carrier may avoid all liability except from its own negligence, by a special contract. *York v. Central R. R.*, 6 Allen 489. The doctrine that he may avoid all but *gross* negligence is repudiated in *Christenson v. American Express Co.*, 15 Minn. 208, 270. In case of such special contract, the burden of proof is still on the carrier to show not only that the cause of loss was within such exception but that there was no negligence on his part. *2 Greenl. Ev.*, 219. The liability for live stock is the same as for other freight except for loss or injury resulting from the nature and propensities of the animals themselves. *Cooley on Torts*, 3rd Ed., 1351.

CONTRACTS—LEGALITY—RELIEF—PART PERFORMANCE.—SAUERHERING V. RUEPING, 119 N. W. 184 (WIS.).—*Held*, that where there is part performance of an illegal contract, the court will not aid either party thereto. Marshall and Barnes, J. J., *dissenting*.

In illegal contracts, partly performed, the courts make a distinction between those that are merely *malum prohibitum*, and those *malum in se*, and hold that in the former class money paid thereon can be recovered. *Pratt v. Short*, 79 N. Y. 437; *Knowlton v. Spring Co.*, Fed. Case No. 7903 (N. Y.). So, though the contract is void, money which has been paid on a lottery ticket may be recovered. *Wardell v. Waite*, 7 Johns. (N. Y.) 434. And, even though wagers are void by statute, money deposited with a stakeholder may be recovered by the loser even after the event has taken place; *Wheeler v. Spenser*, 15 Conn. 28; *Lewis v. Burton*, 74 Ala. 317; and the same rule applies where the money on a fully executed illegal contract remains in the hands of a mere depository. *Woodworth v. Bennett*, 43 N. Y. 273. Notwithstanding the illegal contract, the complaining party can recover if he can establish his case without relying upon the illegality of the transaction. *Phalen v. Clark*, 19 Conn. 421. And it seems to be settled that after a contract, confessedly against public policy, has been carried out and money contributed by one partner, the